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Meeting Resistance to a Policy of Cadaveric Organ Conscription: A Discussion of the Important Issues and Arguments

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by

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ABSTRACT

Conscripting organs from cadavers represents a radical new approach to the problem of organ procurement for transplantation. As it currently stands, there is a wide disparity between the supply of viable organs and the need for those organs in order to perform life-saving transplantations. There is, therefore, a major problem with the current organ procurement model in the United States. Cadaveric organ conscription avoids the requirement for consent in organ donation; all candidates for organ donation will have viable organs harvested for transplantation under this policy. Organ conscription has the potential to close the widening gap between the number of people who need an organ transplant and the number of people who donate an organ.

I contend that conscription of organs from cadavers is the best approach to adopt in order to solve the problem of organ procurement. I defend organ conscription from numerous objections, and attempt to show that is is both a practical and desirable policy. I conclude not only that the benefits of organ conscription outweigh the drawbacks, but also that organ conscription is the most morally desirable approach to procurement.

Meeting Resistance to a Policy of Cadaveric Organ Conscription: A Discussion of the Important Issues and Arguments

Introduction

Most people in the United States are aware of the precarious situation of many individuals who are sick enough to need an organ transplant to survive. The difficulties involved with organ donation have been dramatized in popular media for decades--told from the perspectives of patients, donors, and the families of both. The dilemma, in basic form, is something that can be easily grasped: there are people who die every year waiting for an organ transplant and, at the same time, there are people who die with viable, functional organs that for various reasons are not harvested for transplantation. Whether one considers this a waste of "precious resources" or simply the unavoidable byproduct of a free society is, in my opinion, irrelevant.

Those with end-stage organ disease (ESOD) and the newly deceased with viable organs are inextricably bound together. On one side are the people whose lives would be saved and prolonged for a number of years with one straightforward solution, a new organ. On the other side are the people whose lives have already ended, and whose bodies will be committed either to the earth or the flames. The relationship between these two groups is striking, and morally relevant.

Although numbers and statistics are abstractions from particular, unquantifiable human life, they can often tell a compelling story. As of April 1, 2012, the number of individuals on the United Network for Organ Sharing (UNOS) waiting list for an organ transplant is officially 113,746. (Active candidates numbered at 72,739; active

candidates are people who are currently eligible and medically suitable for transplantation.) Based on last year's statistics, approximately 28,500 transplants could be performed this year, either from a live donor or a cadaver. On average, 18 people die daily waiting for a life-saving organ transplant. At the same time, a new patient is added to the UNOS waiting list every 11 minutes, or around 131 people every day. Thus, on average, an estimated 6,570 people will die every year on the UNOS wait list; around 47,815 individuals will be added in that same year.[1]

There have been many approaches devised to correct the imbalance between organ supply and organ need. One approach, targeted to increase the number of organs procured, is called *cadaveric organ conscription*. The many-worded phrase for this approach is actually very straightforward. It is a policy intended to increase supply of viable human organs by *conscripting* those organs from *cadavers*, not unlike the way that military recruits are conscripted (or drafted) to increase the number of troops available for national defense. The general idea behind cadaveric organ conscription is that when people die, they are no longer in need of their vital organs, and those organs can and should be transplanted immediately from a cadaver to a still-living person. This approach to procurement deemphasizes the role of consent in organ donation. It is thought by many who advocate conscription that the functional organs of a recently dead body should rightfully be used to preserve life. It is a policy designed to place greater value on preserving life, and on reducing human suffering.

In what follows, I will elaborate on the many features of organ conscription, and the arguments required for its success. In particular, there are two arguments that tend

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[1] All facts and figures are taken from two reliable government-run websites: www.organdonor.gov and www.optn.transplant.hrsa.gov. OPTN is the Organ Procurement and Transplantation Network. OPTN works in conjunction with UNOS to maintain accurate databases for purposes of organ allocation. The number of people on the UNOS wait list for an organ transplant in refreshed and updated daily; these sites serve as the best sources for the most current statistics.

to be made most often in support of conscription. One is the utilitarian argument that the overall amount of good brought about through conscription (that is, the goodness of prolonging and saving lives) outweighs the harm done (if any) by ignoring consent. The next major argument is that the deceased have no interests, and thus cannot be harmed if their wishes are disregarded concerning organ donation. I will discuss both of these arguments in further detail in the following sections. These arguments must be discussed, and dealt with in turn. However, it should be made known that neither of these two arguments has the ability to end the debate entirely. Much more is needed.

Since it would be too hasty simply to plug numbers into a utilitarian calculus, or to recite the "dead people have no interests" argument *ad nauseam*, my treatment of the arguments for and against will go like this: First, I will present both of these pro-conscription arguments in their strongest forms, along with a few other important supporting arguments. Then, I will present a major counterargument to conscription from one of its strongest opponents, Walter Glannon. I will also provide a critique of Glannon's view in an effort to address the philosophical issues related to organ conscription. From there, it will be necessary to discuss some of the major reasons that someone might actually adopt the anti-conscription (or anti-donation) point of view. I will then take up a discussion of these reasons.

I will consider a wide range of objections to organ conscription, and organ donation in general. In so doing, I hope to justify my own support of it, as well as meet much of the resistance readers might feel about it initially. It is my belief that organ conscription is the best option currently available for increasing organ procurement and decreasing the number of people on the UNOS wait list. I believe that it is the most respectful policy with regard to the brain dead, kept alive by artificial means, and the living, kept alive either through similar means or by sheer luck.

Arguments for cadaveric organ conscription

There are a host of arguments for organ conscription to examine. To begin, it is helpful to examine some relevant beliefs and moral intuitions concerning what is perhaps the most difficult feature of organ conscription: removal of body parts from a deceased person's body either against their expressed wishes, or without obtaining permission to do so. James Delaney and David Hershenov relate a colorful thought experiment which exposes what they think is actually a commonplace attitude to the fundamental issue of organ conscription from cadavers. In brief, the scenario goes like this. There is a student of philosophy who studied so much about life and death issues that he neglected his own care, and subsequently became sick and died. Before he died, he made known his desire that his body be immediately interred in a mausoleum and left "forever undisturbed."

Next, the cemetery is suddenly struck by lightning and catches fire while someone is visiting the deceased's gravesite. That visitor to the mausoleum is then faced with the choice: respect the deceased's wish to be undisturbed, or use his corpse as a fire shield.[2] What most people, including Delaney and Hershenov's students, think is the proper course of action is to utilize the corpse as protection from the fire. This is because the authors think "the saliency of the need of the endangered overrides certain...factors and puts us in touch with our core convictions on the matter."[3]

To put it differently, imagine what a person would do if they were dying in a hospital, and a person with end-stage organ disease shared a room with them. Would they consent to donate their organs, knowing that that person's life would be saved? From the perspective of the doctors working there, does it not seem the morally right

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[2] James Delaney & David B. Hershenov, "Why Consent May Not Be Needed for Organ Procurement," *American Journal of Bioethics* (2009) 9: 3-10.

[3] Delaney & Hershenov, p. 4.

thing to do to take the organs from the recently deceased person and transplant them in the sick person? When the proximity between the parties involved in such scenarios is reduced, it no longer distorts our intuitions about the right thing to do.

Organ conscription can also be advocated on the grounds that there is a moral obligation to donate organs, and that since everyone is bound to this obligation we have a right to harvest organs with or without consent.[4] The justification for thinking that there is a moral *obligation* to donate organs derives from a similar justification for cases of "easy rescue," when saving a person's life comes at little to no cost, effort or trouble to oneself. In most examples of easy rescue, it is thought that a duty to help someone in a life-or-death situation falls on an individual when they can do so *easily*. Since in the case of organ donation one has already died, consenting to have one's organs harvested after death constitutes an example of easy rescue--organs are useless in a dead body. This moral obligation can and should be enforced as a legal requirement to give up organs after death, as the examples of "Good Samaritan" laws require individuals to engage in easy rescues (in some states).

It has also been argued that organ conscription is analogous to the practices of mandatory autopsy, taxation and the military draft. Aaron Spital mentions that these are "widely accepted coercive practices that are designed to benefit the public and that require participation of all citizens regardless of their wishes."[5] These "coercive practices" are legitimate state interests, aimed at providing for the common good. Mandatory autopsies are performed when foul play is implicated in a person's death, but they are not restricted to the purpose of preventing crime or seeking retributive justice.

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[4] H.E. Emson has argued even more strongly that people should not be able to choose against having their organs donated. H.E. Emson, "It is immoral to require consent for cadaver donation," *Journal of Medical Ethics* (2003) 29: 125-127.

[5] Aaron Spital, "Conscription of Cadaveric Organs for Transplantation: A Stimulating Idea Whose Time Has Not Yet Come," *Cambridge Quarterly of Healthcare Ethics* (2005) 14: 107-112.

Mandatory autopsies could legitimately be performed also when there are concerns about epidemics or pandemics.[6] This is done to protect everyone living within a particular nation or society.

Not many objections would be strong enough to override the pressing need to research the causes or origin of a communicable disease, or to investigate the details of a murder. Similarly, the military draft is an example in which living people are put in danger, forcibly, in order to secure the livelihood and freedom of everyone else. Compulsory taxation is also carried out in the interest of the society as a whole. The creation of a strong, stable society, and its preservation, are important enough to warrant some coercive actions. The great amount of good that could be produced from conscription of cadaveric organs outweighs many personal objections; the lives of thousands are more important than the wishes of one. (As a side note, the organs from one cadaver actually can be transplanted in several individuals, depending on tissue matching and viability.)

It could be claimed that these analogies are not all on equal footing. Whereas the military draft and taxation are important institutions which benefit *everyone* within a society, organ conscription and transplantation only benefits those *individuals* who happen to have ESOD. On the surface, this objection seems true. However, it breaks down when certain Rawlsian considerations are brought to bear on it. Though it is true that at the moment of organ removal and transplantation only that specific person is directly helped, at some time in the future any one of us could be in need of an organ transplant. Thus, because no one can predict whether they will get sick, or be involved in an accident and sustain damage to critical organs, and then need an organ, it is both rational and ethical that they think of the best interest of those who actually need one

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[6] Delaney & Hershenov, p. 6.

now. In other words, we should think of what we might want done if we were in the same situation as those who need an organ transplant. We should deliberate with *empathy*. (Or, according to Rawls, behind a "veil of ignorance.")

Another important consideration to examine in the argument for organ conscription is the relative interests of the dead as compared with the needs of the living. Proponents of organ conscription argue that whereas the dead cannot be harmed, those living with ESOD are at risk for a substantial amount of harm--i.e., death. Even if it is granted that the dead can be harmed (something which is argued foremostly by Walter Glannon, but also by others, such as C.L. Hamer and M.M. Rivlin) the amount of harm done to them is in no way commensurate with the amount of harm caused to the living when they pass away. Apart from harm to the dead, it can be argued that the family members of the deceased can be harmed when their wishes are ignored regarding treatment of the deceased's body. Again, the interest in those with ESOD in continuing to live outweighs any affront that the family may experience because of organ harvesting. As Spital puts it, "however much harm conscripting organs would impose on the family, the magnitude of such harm could never be large enough to justify allowing people with ESOD to die for lack of transplant."[7]

Objections to cadaveric organ conscription are still made on the grounds that the option to choose what happens to one's body after death is important enough for conscription to cause significant harm, and that such a breakdown of individual autonomy would be destructive enough to outweigh potential benefits. R.M. Veatch discusses what he calls a policy of "routine salvaging," another term for organ conscription. To him, the argument against conscription is based on principle: "If we are a society that insists on respecting the integrity and autonomy of the individual," he says,

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[7] Spital, p. 109.

"we will not assume that something as closely associated with the essence of the individual as his or her body can be appropriated by the state without permission."[8] The principle in question is the role of consent in organ donation, and whether respect for autonomy can serve as the basis for preserving a consent-based model of organ procurement. These are important points, and deserve to be dealt with more extensively.

Arguments in favor of cadaveric organ conscription have been made numerous times now, replete with compelling examples and persuasive rhetoric. It is not my intention in this work simply to regurgitate the original arguments of others. My objective here is to pick up where they leave off, and to rigorously defend organ conscription as a policy, a moral imperative, and a realistic alternative to ineffective methods of organ procurement. Furthermore, I will endeavor to show that many of the assumptions necessary for viewing organ conscription as morally justifiable are not unfounded. In the end, I hope to be able to convince skeptics not only that conscription is philosophically sound, but that it is both desirable and practically feasible as well. In the following sections, I will explicate and defend more of these arguments in greater detail.

Evaluating the arguments: meeting some objections

The utilitarian argument in favor of organ conscription is very strong. However, it has been argued by opponents of organ conscription that any policy based solely on utilitarian grounds violates individuals' autonomy. Walter Glannon, in particular, has said that "The main objection to the utilitarian argument for non-consensual harvesting is that it ignores or overrides one's basic negative right to decide what others can or cannot do

[8] R.M. Veatch, *Transplantation Ethics*. Washington, D.C.: Georgetown University Press, 2000, p. 160.

to one's body."[9] Glannon argues that an individual can be harmed by having a previously expressed wish or interest thwarted after death. When that interest relates to the individual's body, he thinks, the "special relation" that people have with their own bodies overrules the competing interests of others who wish to utilize their functioning organs. In his own words:

> Because the body is so closely associated with who we are, we can have an interest in what is done to it even after we cease to exist...If it is treated in a way that does not accord with my wishes or interests, then in an important respect this can be bad for me and I can be harmed. The special relation between humans and their bodies can make it wrong for others to ignore the expressed wish that one's organs not be harvested after death, despite their viability for transplantation (154).

First, it must be said that, presumably, to "cease to exist" is for one's being to perish from the earth. Glannon is muddying the concept of death by insisting that, existentially, dead people possess interests even though they themselves no longer exist. According to him, these interests are instantiated and made real by previously expressed wishes made by the dead. But the subject of those wishes has ceased to be.[10] Glannon writes as if there were some disadvantaged group of human beings called "the dead," and that they have important rights and claims that we cannot *ever* ignore. His reasoning begs the question: are the dead persons? In particular, do we owe the dead the same level of moral consideration that we owe the living?

We should not worry about what the deceased would have done, what they would have wanted done, or even whether they would approve of decisions being made about their remains. Those who have died are, simply put, dead. They no longer exist,

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[9] Glannon, Walter. "Do the sick have a right to cadaveric organs?" *Journal of Medical Ethics* (2003), 29: 153-156.

[10] Or, if you prefer, think of the subject as having passed on; as an ex-person; as expired and gone to see its maker; as bereft of life; as 'run down the curtain and gone to join the choir invisible'; as a late person; etc.

and for this reason cannot be given the same level of moral consideration that we give to existing persons. Even if the dead were somehow thought to have remaining worldly interests, they would necessarily be subordinated to the interests of the living, existing people who actually occupy that world. The question of what to do with the dead is entirely one for the living to answer. Rather, more central to the concerns of this paper, the question of what to do with *potentially life-saving parts of dead bodies* is one that should be up to the living to decide.

Without question, when a person dies their remains should be properly and respectfully handled. What the living do with the dead, though entirely at their discretion, must be grounded in reason. There is no compelling interest for the living to dispose of the remains of the dead in a way contrary to their previously expressed wishes. In the absence of compelling interest, or when the issue is not morally relevant to the living, we should certainly follow the wishes of the deceased. However, there is no reason to think that harvesting viable organs from cadavers in any way disrespects them. The important difference between the conscription of organs from cadavers and improper handling of remains is not simply that the interests or wishes of the dead are being thwarted; one is an unjustifiable treatment of cadavers and the other is not. There is no morally relevant reason to treat the dead with disrespect, to refuse either to bury or cremate according to their wishes, or to otherwise desecrate their physical remains.[11]

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[11] It is telling how important such mistreatment is considering that even the remains of Osama bin Laden, after his death by U.S. military forces, were given consideration as to the proper means of disposal. According to common Islamic precepts, his body was covered within twenty-four hours of death, ritually washed, and then dropped into the sea. The sea burial was not in accord with Islamic rituals and requirements, however. The U.S. deemed establishing a burial site on the ground contrary to their interests, and did not want to see his grave promoted as a site of worship or pilgrimage. In this case, what some may consider disrespectful handling of remains was done out of a compelling political interest, with other actions done out of a desire to respect the interests and beliefs of the dead.

The question may arise, though, to what extent we should obey the wishes of the deceased as expressed through wills. For example, one might ask why, on this account, should we allow any important resources to be transmitted or bequeathed as one decrees in a will? If the duty to engage in easy rescue is a justification for conscription, then is it not also a justification for forcibly taking one's money and appropriating it for humanitarian causes? These questions turn on the difference, if any, between the case of organ conscription and the case of seizing one's money or personal property. This is a legitimate worry concerning paternalistic interventions in people's lives. In order for organ conscription to survive such criticisms, there must be drawn a principled distinction between legally requiring one's organs to be harvested and legally requiring one's assets to be used against one's will after death.

There is, however, a principled distinction between conscripting one's vital organs after death and seizing one's property after death. In cases of easy rescue, it is important to keep in mind that one is only thought obligated to help when doing so causes little or no suffering, trouble or cost to oneself. Forcing people to give up a *substantial* amount of money, or seizing their property or assets, is not an example of easy rescue, mainly because it does not come at little to no cost or trouble. It is, in fact, a hefty price to pay for doing a variable amount of good. By contrast, bodily organs, of no benefit to the cadaver, are straightforwardly beneficial to those who need one transplanted in them to survive.

There are surely much better ways to raise money for humanitarian interventions, ones that do not intrude on personal liberty and the ability to spend one's money as one pleases. Also, we have a good example of an already existing "easy rescue" policy with regard to money transmitted through a will: the estate tax. The federal government already takes some of the value of assets transmitted through a will. If we wish to

engage in easy rescue, we should either marginally increase the estate tax, or simply keep it as current policy, and direct a larger portion of the federal budget to famine relief or other humanitarian causes. *This* is analogous to organ conscription, and an example of easy rescue. Since such policies like the estate tax already exist, they provide further legal precedence for organ conscription. If a proposal to increase taxes or conscript cadaveric organs were filtered through a fair political process, it would not be considered a *violation* of autonomy, since a democratic process respects autonomous decision-making even when it may ultimately go against one's particular position or choice.

When there is a morally relevant reason to treat the dead perhaps differently than they may have wished while alive, as is the case with cadaveric organ conscription, such action is not disrespectful. The morally relevant reason to extract viable organs from the dead--sometimes, but not always, contrary to prior wishes--is that thousands of people will be spared agonizing, early deaths. Thousands of others will have their quality of living dramatically improved. Those who advocate organ conscription (this author included) do not take the intervention lightly. Because in our society we respect autonomy to the greatest extent possible, any intrusion on personal choice would have to be supported by very weighty considerations. (More on respect for autonomy later.) The statistics presented and discussed at the beginning of this paper, I believe, provide sufficient justification for such intrusion.

Secondly, the concept of harm needs to be analyzed if we are to talk about harm sustained by the deceased, and harms sustained by those living who have the knowledge that their organs will be taken without their consent (if conscription were adopted, that is). Who exactly is harmed, and in what way are they harmed? I will deal with these issues more as we go along, but one counterargument to the claim that no one is directly harmed by conscription is that individuals who wish to maintain bodily

integrity after death are harmed while they are alive *knowing that their wishes will be ignored with regard to their bodies once they die*. Thus, the argument goes, the subject is harmed before the putative violation occurs; the knowledge of such violation is itself a psychological harm.

It seems hard to argue against this view by claiming that that person is not in fact harmed. However, that "violation" is only as harmful as the desire connected with it is important or weighty. The desire to maintain bodily integrity is a bizarre wish. It may harm people to have their wishes thwarted, but bizarre wishes are not nearly as salient as others, and in most cases we are not obligated to fulfill or obey them. The knowledge of having one's wishes ignored after one's death may not be detrimental enough to be considered a harm, though. It could be thought of as more of a conflict or a challenge to one's adaptive skills rather than a harm. A sincere desire to keep one's bodily organs retained in one's corpse after death is another in a long list of desires that others are in no way obligated to fulfill.

Thwarting the interests of both the dead and the living is not *de facto* a harm. If it were, then everyone is harmed nearly all of the time; we will all have our critical, vital, or integral interests thwarted at some point in our lives. No one gets everything that they want, even when it relates to the treatment of their own bodies, or interests related to the body and the avoidance of harm. In any society, the principles of autonomy and benevolence (or paternalism) must be weighed against each other; no one principle is predominant over the other.[12] This is where examples like forced taxation, the military

[12] Not only must they be weighed against each other, it is not always clear when one is preponderant over the other. Diseases like Alzheimer's which involve a gradual degeneration of cognitive abilities and executive function, and which usually include major personality changes, present problematic situations for care-givers and family members. When someone has become a radically different person because of the progression of their disease, do we still respect their autonomy by following their wishes? Or, should the desires of the pre-disease self be the proper guide? For more on this issue, see Pam R. Sailors, "Autonomy, Benevolence and Alzheimer's Disease," *Cambridge Quarterly of Healthcare Ethics* (2001), 10: 184-193.

draft, and mandatory autopsies are especially instructive. Taxation, the draft, and mandatory autopsies are practices which can be quite oppressive, and in the case of taxation and the draft they are oppressive to those who are *alive*.[13] However, it is not commonly argued that everyone is harmed because they are forced to pay taxes to the state. Furthermore, the military draft is a state intrusion on the interests of the living to remain alive, and to avoid mortal danger in the form of warfare. Yet, it is a common practice in many nations to implement a policy of conscription in times of war, and in the United States this has happened five times. The legal status of the draft and selective service indicates that providing sufficient troops to ensure national security is a legitimate state interest, and justifies violation of individual autonomy.[14]

The interests of draft-dodgers (during wartime) and tax-evaders are routinely thwarted and, on Glannon's account, they are seemingly harmed. However, if a person dies leaving behind a wealthy estate and the expressed desire for no money to go to the government, we don't say that that exact person is harmed when the government seeks compensation for taxes they may have owed. The argument made by Glannon, and others opposed to the idea of cadaveric organ conscription, is that a very real harm can befall someone even after they have died.[15] This idea is called "posthumous harm," and

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[13] Spital, p. 109.

[14] Aaron Spital & Charles A. Erin, "Conscription of Cadaveric Organs for Transplantation: Let's at Least Talk About It," *American Journal of Kidney Diseases* (2002), 39: 611-615.

[15] The idea that the dead can be actually harmed is thought to originate from Aristotle, when in the *Nicomachean Ethics* he says: "That the fortunes of his descendants and of all those near and dear to him do not affect the happiness of a dead man at all, seems too unfeeling a view and contrary to the prevailing opinions." Whatever the prevailing opinion is now, it seems obvious that the dead man's happiness or surviving reputation is not nearly as important as the happiness of a living individual, given the chance to continue living. We may have to make some dead people unhappy in order to save many lives.

it is a common response to the contention that the dead have no interests.[16] It is not clear, however, that the dead can be harmed, as the justification for posthumous harm is founded on respecting the interests and wishes of *living individuals* before death. Furthermore, respect for the interests and wishes of persons, either living or dead, does not translate automatically into command. Insofar as there are obligations to respect the surviving interests of dead individuals, they are still subject to the strictures imposed by being members of a shared human society.

So what exactly is it that violates the dead to the point that many argue they are being harmed? The aforementioned quotation by Glannon indicates that there is some "special relation" between humans and their bodies that makes doing something to their bodies without permission--in life the same as in death--an absolute wrong. Glannon does not, however, elaborate or expound upon this ostensible connection. What is that special relation? Is it identity? Is it ownership? Are we to identify the essence or soul of a person with the physical body? To do so would be to ignore the teachings and beliefs of every major world religion, not to mention various traditions within philosophy that think there is more to life than merely the observable brute facts of the world.

I do not in fact think that Glannon and other anti-conscription philosophers believe that the body is identical with the soul, or that the human soul (whatever it may be) can be reduced to the physical. Yet, such argumentation invites speculation of this type. One could very well claim that the body is synonymous or otherwise identical to the soul. The objection, then, is that the special relation between people and their bodies is indeed an inviolable one and, absent expressed consent (before or after death),

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[16] Spital says that "the concepts of surviving interests and posthumous harm are difficult ones and I have yet to be convinced of their existence," p. 109; whereas Glannon thinks "the idea of posthumous harm generates obligations for others to respect the surviving interests of the dead," p. 154.

someone can therefore be harmed by invasive or unwanted procedures. This objection, of course, is easily argued away. If the body and soul were thought to be one and the same, then when the body dies the soul also dies. Or if we were to assume that there is no such thing as the soul, but only the body, then biological death marks the absolute end of a person's identity, essence and existence. Thus, the so-called special relation itself no longer exists; death will have negated the force of that relation. We would no longer need to worry about offending the special relation between humans and the soul/body.

Though there may be people who make such objections, philosophers and writers who oppose organ conscription--or even other methods of procurement, such as presumed consent or mandated choice--tend to make more sophisticated arguments. One main philosophical bulwark in the argument against organ conscription is the principle of autonomy. The right of the individual to decide matters relevant to their own life, a right to self-determination, the negative right to govern one's own body, freedom from coercion--all are essential features of individual autonomy and the pillars of a liberal society. To a very large extent, these are principles upon which our nation is founded. Thus, the importance of the principle of autonomy in medical ethics cannot be understated. It is worth examining some of the objections that could be made on the grounds that a policy of cadaveric organ conscription intrudes on an area of human existence that is properly left to individual choice.

One main objection to the idea that organs can be harvested from the dead and transplanted into the sick without prior consent is that what happens to our bodies after we die can be considered an integral part of our "life plan." Therefore, if we wish to respect the autonomy of the individual and their right to self-determination, we must also respect their wishes after death regarding treatment of the body. Glannon (again)

provides further justification for this view by claiming that the body is "essential to the development of a self in a life plan," and that an interest in bodily integrity plays a major role in that plan.[17] This argument makes a very interesting assertion: what happens to one's internal organs after death belongs to an overarching plan one devises for one's life.

This idea curiously ties together two seemingly contradictory concepts. That events taking place well after one's death can be considered important, if not essential, to one's life plan--the very personal decisions one makes when choosing how to live--is a somewhat difficult concept. This is akin to saying that the way someone lives their life, the choices they make and the paths they take, has a lot to do with what other people do after they have died. It is easy to see how end-of-life decisions can be a part of one's life plan. The experience of growing old, of dying and suffering physical and/or mental decline is directly a part of one's life. After-life decisions (made by other, living people) are another matter.

It might even make sense to include the care of one's property and estate after death as an important part of a life plan. However, there is a significant difference between one's property and bodily integrity after death, and it makes talk of the former belonging to a life plan coherent and the latter incoherent. Again, when discussing the interests of the dead, it is important to point out that the things we think the dead are interested in are in fact things they *were* interested in when they were alive. Naturally, maintaining bodily integrity while alive is something every living person is interested in, by virtue of being alive and wishing to remain so. Before we die, we wish to sort out the transmission of property and other material possessions so as to benefit those individuals close to us who still survive. These are things in life that someone has

[17] Glannon, p. 154.

acquired and has the right to dispense with as they please. What happens to those material possessions after death could fit in nicely with a life plan.

The key questions here are what harm is actually done by taking vital organs from a person's body once they have already died? No real harm is done. What harm is actually done by seizing property and wealth that a person acquired in life, and preventing that property from being transmitted according to that person's will? Quite a bit of harm, not only to the deceased person's life plan (it makes sense to put away money to provide for one's children, for example, and for this to be an essential part of a life plan) but also to the individuals connected to that person who survive their death. The harm to those people--the living, surviving family and friends of the deceased--is sufficient to outweigh the good that would come from taking that money. The damage done to personal autonomy, and the right to order one's affairs and possessions as one sees fit, would be significant.

Defying personal wills regarding the transmission of property to living heirs would be a detrimental practice for *everyone* within that society. Defying personal wills regarding the maintenance of bodily integrity after death would be detrimental to no one, and beneficial to many. Though one could argue that the person whose will is disregarded is in fact harmed, or the family is harmed by witnessing such disregard, the damage done to the general respect of autonomy is small, or even insignificant. The harm visited upon the dead, or the family of the dead, is also insignificant.

Further, nobody actually benefits from the choice to retain one's vital organs after death, not even the deceased. We do not respect a person by fulfilling their every wish, desire, or whim; we respect them by honoring their lives, not their deaths. We can disagree with, and act against, one's choices and still not violate a fundamental and universal right to make them. Ignoring one's wish to maintain bodily integrity (absent

religious reasons) is a good example of this. The lives that can be saved from the organs in one body (one cadaver can provide organs for many transplants in many different people) *far outweigh* the good that comes from allowing people to keep organs in their bodies after death. The harm resulting from ignoring such wishes is not near as great as the harm that comes from the suffering and death of those in need of a transplant.

It does not, therefore, make a lot of sense why someone would include maintaining bodily integrity after death as an essential part of that same life plan. In fact, given modern capabilities for organ transplantation, it runs counter to the very reason people make wills and bequeath property to others--to benefit those who continue to live. Therefore, if bodily organs are to play any important role in a person's life plan, they should be *transmitted*, if possible, to living individuals as property would. The only difference would have to be that organs go to those whose critical interest in living is being threatened at that time. In effect, the life plan objection seems to be more a defense of an individual's right to make selfish choices, even after death, rather than a defense of a morally important personal choice. In this case, one argument made in favor of organ conscription is particularly germane: the interest in keeping one's deceased body full of vital organs must be weighed against the interest of the sick to continue living. An interest in bodily integrity may indeed form a part of one's life plan, but in most cases it cannot outweigh another's interest to prevent their life plan from meeting an abrupt end.

If we are to take the "life plan" objection to organ conscription seriously, then the reason one wishes to retain vital organs within their bodies after death becomes a fair topic of debate and discussion. Even free choices must be evaluated and weighed against competing considerations. Individual freedoms are not, and have never been, absolute. In the following section, I will evaluate some of the major reasons why people

commonly object to having their organs removed posthumously. Specifically, there are eight themes derived from various attitudinal studies about organ donation that impact an individual's decision to become a donor. Not every theme surrounding the issue presents a negative view of organ donation. In fact, a few indicate that there are some reasons that many people share for supporting donation, or becoming a donor.

Reasons for opposing organ donation

Joshua Newton identified eight major themes about attitudes that people have toward posthumous organ donation in his examination of twenty-seven different articles published within the qualitative literature.[18] Ranked in order of relevance and degree of concern expressed by those involved in the various studies, the eight themes are as follows:

1. Religion
2. The medical profession
3. The body
4. Transplant recipients
5. Altruism
6. Death
7. The family
8. Personal relevance

Of these eight themes, concerns about altruism actually motivate people to become an organ donor. Personal relevance, thoughts about death, and concerns for one's family account for significant areas of either ignorance or misunderstanding of the organ donation and transplantation process. It seems that for a large number of people interviewed in the studies, the issue of organ donation might only become important once it had touched their lives in a personal way. Examples of this include experiencing

[18] Joshua Newton, "How does the general public view posthumous organ donation? A meta-synthesis of the qualitative literature" BioMed Central Public Health 2011, 11:791. http://www.biomedcentral.com/1471-2458/11/791.

a loved one in need of an organ, contemplating one's own time of dying, or considering the impact that organ donation and/or death could have on one's family. Themes 1-4, however, account for much of the resistance individuals have to organ donation in general. I will evaluate and discuss these four themes as they specifically relate to cadaveric organ conscription.

Theme 1: Religion

Religious belief is often thought to be a major reason that people object to organ donation. Upon informal discussion of ideas related to cadaveric organ conscription, many people may question whether such a policy violates individual rights to free practice of religion, and respect of those beliefs on the part of the government. Furthermore, one central religious objection to organ donation is the "bodily integrity" argument--that maintaining bodily integrity after death is important. Recall that Glannon, Veatch, and others who oppose cadaveric organ conscription also draw on the bodily integrity argument, but for different purposes. Their motivations for making the argument stem from a desire to defend what they believe is an important component of individual autonomy. At the end of the previous section, I indicated that the objection to organ conscription based on bodily integrity as an essential part of one's life plan could only be successful if one's reasons for preserving bodily integrity were good. Before proceeding to discuss the argument made from religious grounds, I would like to analyze the bodily integrity argument on its own.

Beliefs need not always be rational, or even held for what we would consider good reasons, in order to be worthy of respect by others. When one has the free will to form a life plan, many beliefs that form a central part of that plan may or may not make a lot of sense; they may only fit the plan insofar as the person who believes them decides

that they do. Outside observers may approve or disapprove of particular beliefs held or actions taken in other people's lives. In most cases, the principle of autonomy is thought to overrule this kind of unfair judgment, and moral reflection leads us to defend most individual rights from the interference of others. But in considering the odd case of bodily integrity as a central part of one's life plan, an individual's reasons for such a belief must be pressed. Viable human organs are too valuable a resource, and the lives of the sick and dying waiting for one (or more) are too important, for one's desire to maintain bodily integrity after death to warrant unscrutinized respect. This is a belief that should be evaluated.

First, we should ask what it means to preserve bodily integrity. What sort of postmortem interventions compromise the integrity of the body? It is not always clear whether certain actions done to the body affect its physical integrity. For instance, if the corneas in the eyes were taken in order to help those who have some form of a visual disorder, is the integrity of the eyes as a whole compromised? The eyes do not need to be functional after death, and the appearance of the eyes will not have been radically altered. Additionally, no organ as a whole will have been removed. This applies equally to the liver. Since only a small lobe of the liver needs to be transplanted into another person's body for it to grow into a full-size, functioning organ, only a portion of a cadaver liver must be harvested. The liver, for the most part, will remain in the cadaver and at the same time someone will receive a life-saving transplant.

If those considerations do not convince someone that bodily integrity is a troublesome concept, then perhaps further questioning is required. Does the concept of bodily integrity require that one die in possession of all of one's *original* vital organs? It is not fully understood whether the term "bodily integrity" applies to one's original body parts and natural state, or whether it simply applies to the condition of the body at the

moment of death. This question is important because, relatedly, we can ask whether the act of receiving an organ from another person's body as a transplant will compromise the original integrity of one's body. In such a case, the person who is so intent on maintaining bodily integrity as an essential part of their life plan should, it seems, be inclined to refuse transplantation of someone else's organs. This is usually not the case, and instances of people who are unwilling to donate an organ but completely willing to receive one abound.[19]

Perhaps the idea of bodily integrity has more to do with any sort of meddling in the physical state of the body at the moment of death, or any time thereafter. In this case, we would expect a person who is concerned with posthumous bodily integrity to desire not to be handled by a coroner. Viewed from this perspective, the bodily integrity of a great number of people is compromised when they are subjected to the gruesome process of embalming, and other postmortem preparations for burial. Yet there is not a large body of philosophic literature raising objections to the practice of embalming on the grounds that it is a violation of bodily integrity, and thus autonomy, for those concerned with maintaining it. Finally, as I mentioned earlier in the course of discussing the argument for cadaveric organ conscription, there is already strong precedent for ignoring an individual's desire for bodily integrity in the case of mandatory autopsy. The justification for mandatory autopsy makes trumping certain autonomous choices in favor of a greater good or greater compelling interest legitimate.[20]

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[19] R. Jarvis, "Join the Club: A Modest Proposal to Increase Availability of Donor Organs," *Journal of Medical Ethics* (1995) 21: 199-204.

[20] This is, of course, not to say that as a general rule such action is always justified. The specific justification for mandatory autopsies applies to the discussion here because it deals with overriding autonomous choices made by people who no longer exist. Namely, it deals with ignoring the prior wishes of the dead in favor of a compelling interest on the part of the living. The analogy between mandatory autopsies and organ conscription is pretty plain.

I have tried to show that the bodily integrity argument by itself is not very coherent, or well-defined. If someone desires bodily integrity after death because of weakly justified beliefs, or even for no reason in particular (they just felt like exercising their right to autonomy, maybe), their interest does not outweigh the interest in continuing to live of those with ESOD waiting on the transplant list. However, the bodily integrity objection may be worth honoring if it is associated with a religious tradition or religious belief, both common sources of resistance. I will next briefly examine the bodily integrity argument in the context of religious belief. Then, I will discuss the possibility of granting an exemption to organ conscription on religious grounds.

Newton states that "the religious belief most commonly used to reject organ donation was the notion that bodily integrity should be maintained to safeguard progression into the afterlife."[21] Though belief in an afterlife need not be attached to any particular religious tradition, it is commonly thought of as belonging to the purview of religion. Despite the sacrosanct status enjoyed by many religious beliefs, this one should be challenged in order to clarify its meaning and significance. Could the person making this objection identify a non-arbitrary point at which a cadaver can lose its organs, or otherwise lose its physical integrity, and the person associated with that body *still* gain entry to a heaven or an afterlife? This is an important question for the religious objector to answer, since eventually all bodies will begin a process of biological decay in which organs and tissues "return to the 'biomass'."[22] They will need to identify at what point this inevitable and natural process of decay does <u>not</u> affect the deceased individual's progression into the afterlife.

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[21] Newton, p. 3.

[22] Spital, p. 109. This point is made in connection with the work of both John Harris and H.E. Emson.

However, if no non-arbitrary point in this process can be defended by objectors to organ conscription, then the natural decay of the postmortem body undermines the rationale for concern about bodily integrity going into the afterlife. There must be some point where this need for bodily integrity no longer matters. For, if it is at the exact time of death that it does not matter--perhaps because one also believes that the soul has already departed and abandoned its worldly vessel; or the soul, organs and all, has already made its passage to the "other side"--then conscription of cadaveric organs does not violate this requirement. A person will have already died and been well on their way to the afterlife before viable organs are harvested from their body.

A possible answer to this criticism could be that the bodily integrity requirement for the afterlife plays a significant role in burial rituals. One could say that it is believed that the body must be intact at the time of burial, or specifically when given religious rites or ceremonial treatment. This move will only serve to shift the burden of proof to the person who wishes to receive an exemption from organ conscription; they will have to demonstrate that their beliefs are associated with a particular religion, and that the religion has a well-defined perspective on proper burial rites. Then, the bodily integrity argument is being tied to verifiable doctrinal belief, and not mere asserted belief. This makes evaluating its authenticity a bit easier.

One further point to consider in cases of objection based on belief is how closely analogous the bodily integrity objection is to conscientious objection to war. If a U.S. citizen, when found qualified for military service, can prove that he or she opposes war for religious or moral reasons, they can be classified as a conscientious objector and can be exempt from combat duty. Importantly, this objection need not be based on religious belief, though it is commonly associated with religion. If a person were to argue that having organs removed from their bodies after death is an egregious violation of

personal conscience, perhaps they should be accommodated and allowed an exemption, similar to conscientious objection to war.

We must ask, however, for what reason one's conscience is so opposed to organ transplantation or even donation, that that person feels compelled to resist posthumous recovery of bodily organs. In the case of war, it is usually quite obvious why a person argues against engaging in combat: there is much to be said against war, and killing, and little to be said against remaining peaceful in one's personal life and actions. To force someone to fight against, and possibly kill, another person *against his or her conscience* would indeed be wrong. When we talk about a person's conscience, what I think we refer to is their ethical or moral code. Apart from a strongly held religious belief, what grounds would one have for opposing life-saving organ transplantation? Since organ conscription would be carried out after a person had died, even if harm is caused it is not more immoral than it is moral to provide an ailing person with new vital organs. That is, once again, the good of conscription overwhelms any possible bad. The same cannot be said for the military draft, and thus it is allowed that conscientious objectors be exempt from the fight.

How, and under what conditions, can a religious exemption to cadaveric organ conscription be granted? One possible solution is to require that those who seek an exemption base their objections on the text, scripture, or official doctrine of the religion to which they belong. Spital intimates something like this when he mentions a "strong burden of proof" that he thinks should be required in order to discourage false claims of religious belief to obtain an exemption.[23] There are at least two problems with this solution, though. One is determining whether a person is actually an adherent of a particular religion, or if they are simply using a religious text as justification. Another

[23] Spital, p. 109.

problem is with textual interpretation. Even experts within a religious tradition will usually disagree over the meaning of significant passages in holy books. If there is any ambiguity it could be difficult to determine the meaning of a passage, and consequently to decide whether it suffices as proof for an exemption.

Thus, another possible solution to the problem of religious exemption is to rely on religious authorities--priests, pastors, rabbis, imams, and other clergy--to attest to a person's membership and involvement in their stated religion. This, unfortunately, places quite a bit of pressure on religious leaders. It also invests them with a significant amount of power and influence on the issue of organ conscription, and excludes people who, for various reasons, are not active within the religious community. These are undesirable consequences, and would make the entire religious exemption process invalid. It is also not clear how true, genuine belief in a specific religious stance could be gauged. I don't think this is possible to do, even for religious leaders.

There remains, perhaps, a middle way to allow for a religious exemption to organ conscription. Some substantive proof that the religious belief cited is real, and is advocated by a religion or church recognized by the government as such, should be an important component. The criteria for proof, though still difficult, could include some combination of text or doctrine and a testimony on behalf of a religious authority as to the veracity of the interpretation of the text, as well as a statement of familiarity with the person in question. Along with these provisions, a further disincentive could then be added. What I will call the "reciprocity rule" would stipulate that those who refuse to have their organs harvested under a policy of cadaveric organ conscription also thereby waive any right to receive, in a future scenario, a life-saving organ transplant. They will effectively remove themselves from the pool of people who could potentially donate and/or receive an organ. The objection to organ conscription therefore must be based on

substantive reasons, with actual support coming from within a religious tradition. It must also be completed conscientiously, meaning would-be objectors must be fully informed of the consequences of their actions.

The basic idea of the reciprocity rule is that if a person is willing to receive an organ, then they are also willing to give an organ, if needed. If a person is not willing to receive an organ, then they are not obligated to give one. There are two very crucial features to this solution, though: 1) People who had formerly objected on religious grounds, and consented neither to give or receive an organ per the reciprocity rule, could receive an organ if it was needed provided that they would then have to drop their objections and join the "conscriptable" donor pool. 2) The reciprocity rule can only apply to a religious-based exemption, and should not be available to anyone who opposes the idea of conscription. If everyone were allowed to opt-out of conscription with the stipulation that they could not receive an organ in the future if needed, the policy would effectively be compromised because a) it would no longer be a policy of conscription, per se--it would in fact be a *routine recovery with opt-out* policy; and b) the force of moral justification behind conscription would be voided.

The latter point requires elaboration. It does not seem feasible, nor morally desirable, to foist upon the medical profession a requirement not to save lives, cure diseases, and perform critical procedures on a person in times of need based on their past actions. That is, if a person with a serious personal objection to organ donation decides to opt-out and simultaneously waives the right to receive a transplant if needed, physicians would be compelled to enforce the consequences of their actions, namely denying them the life-saving treatment they know the patient needs. It would be wrong, not to mention totally impractical, to require this. Furthermore, organ conscription is not meant to be punitive in nature.

As to the former point, I think there are numerous reasons why one would prefer conscription to any kind of opt-out policy. A routine recovery with opt-out policy is a form of *presumed consent*. Organ harvesting is thought to be justified when the wishes of the deceased are unknown, and no objection has been recorded; the consent of the deceased is presumed as given. In cases of presumed consent, the state does not remain agnostic about an individual's wishes when it, perhaps, should. Presumed consent policies are seemingly designed to respect the idea that consent is a requirement for organ donation, while also providing a way to harvest in cases where a person's wishes are not known. However, if our procurement policy is to be based on consent, it should respect it completely, not partially. This is an area where I agree with Veatch: "What is so offensive is the desperate attempt to hold on to the consent and donation model by using the language of consent for what is really a policy of routine salvaging...It [presumed consent] dresses salvaging in the flimsy outer garb of the consent doctrine. Far better, if one favors salvaging, to admit it openly."[24]

Furthermore, if we are going to allow people to choose whether they wish to donate organs, that choice should be completely free from coercion, either subtle or strong. No form of penalty or disincentive should be attached to the choice to donate or withhold one's organs. If we are going to respect consent, it should be respected all the way through. Those who decide to opt out should not be penalized for their choice, if consent is to remain a central part of our procurement policy.

The reciprocity rule is not intended to punish those seeking religious exemptions. Indeed, many of the reasons why I think the rule could actually work for religious-based exemptions have to do with the realities of current religious practices. For one, much religious objection is founded on a more general rejection of modern science and

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[24] Veatch, p. 161.

modern medical practices. That is, specifically, those who object on religious grounds usually do so from the belief that not only giving, but more importantly *receiving* an organ from the body of another person is wrong, or goes against the teachings of their religion. Likewise, many religious traditions that forbid organ donation, live or posthumous, also forbid such simple medical interventions as blood transfusions, intravenous fluid resuscitation, and chemical treatment (e.g., pharmacological medications, anesthetics, etc.).[25] Many of these medical practices are prerequisites for the transplantation operation, and thus adherents to religions that forbid them would necessarily be ineligible for receipt of a new organ.

A final argument I will make in support of the reciprocity rule and the religious-based exemption to organ conscription is that most clergy, across the many different traditions, are in fact supportive of organ donation.[26] This especially includes many major world religions, Christianity, Judaism and Islam among them. Thus, if someone truly seeks to find out the position their religion of choice takes on organ donation, they will likely find little or no resistance to it by the clergy. Additionally, they will probably have a difficult time finding substantive religious reasons to back up their personal objection to donation or to conscription.

It seems that, on further inspection, resistance to the concept of organ donation and the process of transplantation is not as widespread among the religiously inclined as is commonly thought. What is undoubtedly needed, however, is extensive education

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[25] One example of a religion that forbids blood transfusions is Jehovah's Witnesses. Scientologists object to the use of pharmacological drugs in general, especially in psychiatry. Contrary to common opinion, The Church of Christ, Scientist (Christian Science) does not *forbid* blood transfusions, medical healing or organ donation/transplant. They believe it is a matter of individual choice on the part of their followers to decide what sort of medical treatment to receive. An informative website that lists many (but not all) religious viewpoints and statements about organ donation is http://www.organtransplants.org/understanding/religion/.

[26] Gallagher, C. "Religious attitudes regarding organ donation." *Journal of transplant coordination* 6.4 (1996):186-190.

about organ donation and its relationship to religious belief. This is important regardless of whether cadaveric organ conscription is implemented as an actual policy.

Theme 2: The medical profession

Newton identified mistrust of the medical profession as a common source of concern among study participants. Some individuals expressed a worry that doctors "would deliberately remove a patient's organs before the patient had died," while other people believed "life-saving medical care would be withheld so that patients could become eligible for organ donation."[27] Thus, an important point to make in order to counter fears about potential abuses of power by people working in the medical profession is that simple safeguards can be implemented that would prevent much, if not all, of the abuse. Though this does seem a somewhat irrational fear, it is nonetheless a valid cause for concern. A discussion of different ways to address and prevent abuses within the health care system is crucial for the success of the cadaveric organ conscription argument.

To address the concern that doctors would harvest organs before a person had actually been declared dead, I would point out two facts about the process of organ recovery. First, current procedures that govern how doctors, nurses and other medical support staff approach a candidate for organ donation explicitly preclude the possibility of premature organ recovery. A person must be declared dead by physicians invested with the proper authority to do so before transplantation procedures can begin. Second, the doctors who treat patients with life-threatening medical conditions and the surgeons who perform organ removal and transplantation are always *two completely distinct groups*. That is, the doctors who do the actual surgical removal of organs are not in any

[27] Newton, p. 7.

way involved with a patient's treatment before death. Therefore, organ recovery would only occur once all efforts to save a life have been exhausted, and a person has been declared dead by independent, treating physicians.[28] These are two strict conditions that health care and regulatory agencies impose on hospitals and the medical professionals working in them.

The idea that doctors might withhold life-saving medical care so a patient would become eligible for organ donation (i.e., passively killing patients) is most certainly unfounded. However, this worry may arise out of an awareness of the dire need for viable organs in our society, and the difficult decisions that physicians may find themselves having to make when confronted with life-or-death situations. Many people may worry about medical professionals inserting their own personal biases, values, and agendas into the care they deliver. Such fears will likely not disappear overnight, nor will they be calmed through reasoned argument and persuasion alone. Still, I would argue, contrary to what I imagine is most people's first reaction, that a policy of cadaveric organ conscription would most effectively disarm this concern. It would accomplish this by satisfying a simple principle of supply-and-demand. Implementing a policy of organ conscription would cause the overall supply of viable organs to increase almost immediately, and in turn the demand for organs would relax. Consequently, there would be little need for physicians to hasten a diagnosis of death in order to procure badly

[28] Source: Organ Procurement and Transplantation Network (OPTN) Policies, "Minimum Procurement Standards for an Organ Procurement Organization (OPO)," updated on 6/29/2011. All policies, bylaws, and policy proposals are public record. Pdf files of all OPTN policies can be found at: http://optn.transplant.hrsa.gov/policiesAndBylaws/policies.asp.

needed organs. Conscription would already have eased the imperative to harvest organs that, perhaps, medical professionals feel a duty to obey.[29]

Theme 3: The body

Concerns about the body intersect greatly with religious belief and worries about unethical or disrespectful treatment by medical professionals. In a summary of the studies by theme, people generally expressed a desire not to have their bodies considered as "meat," raw material, or as something for doctors to greedily dissect and treat as mere spare parts. Newton does seem to think, however, that there is evidence within the reviewed studies to show that if individuals were reassured that harvesting viable organs was handled respectfully and "in a manner that preserves the outward appearance of the body," these concerns could be resolved.[30] Respectful treatment of the body was discussed earlier, in response to Glannon's idea that the dead can be harmed or otherwise disrespected if their prior wishes regarding organ donation were not upheld. In practice, if the organ recovery process was transparent and based on clearly defined criteria, this worry could be assuaged. As an actual policy, if cadaveric organ conscription was publicly debated, and instituted with fair, plain and understandable parameters it could become much more palatable to the general public.

Important, too, is the reality that not all organs would need to be harvested under conscription. A good example of this is the eyes. Since it is easy to understand how people can be concerned about the outward appearance of the body after death, one

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[29] I personally think that most, if not all, physicians do feel that they have such a duty to society, but that they also do not <u>in any way</u> feel justified sacrificing patient care to meet that obligation. I think it is a widely held conviction among medical professionals that they do everything in their power first to save a life. Only after this possibility has been <u>absolutely</u> exhausted do they begin to consider organ donation.

[30] Newton, p. 6.

proviso of an organ conscription policy could state that a person's eyes will not be harvested without prior consent. In making such an exception, we would also simultaneously affirm that all viable *internal* organs can and should appropriately be taken for transplantation. Advances in surgical methods make the recovery of many organs less invasive, involving fewer scars and a significantly less amount of open, garish incisions. The outward appearance of the body, of fundamental importance for burial and visitation rituals, would be preserved under a policy of cadaveric organ conscription.

Theme 4: Transplant recipients

If nearly every person deemed eligible by UNOS to receive an organ transplant actually gets one, as could very well be the case with organ conscription, questions could be raised concerning the recipients of those transplants. People might argue that certain recipients are not fit to be granted the gift of life that came from the organs of a deceased individual whom they have never met. As it is, this argument can be made with regard to the current system of organ allocation. Concerns about transplant recipients range from questions about the role of race and money in allocation to misgivings about a person's moral worth, and just deserts.[31] Even though these concerns will never entirely disappear, I believe that organ conscription is best-suited to deal with them.

Cadaveric organ conscription alleviates many concerns about transplant recipients and the allocation process in general by making both procurement and allocation more equal. Poor and rich alike are candidates for organ harvest after death.

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[31] Newton, p. 8. Misperceptions about the role that wealth, power and influence play in delivering an organ to a person before a less wealthy person with greater need abound today. See: Munson, "Did Steve Jobs Cheat?" in *Intervention and Reflection*, pp.621-623; and Veatch, "The Role of Status: Did Mickey Mantle Get Special Treatment?" Chapter 23 in *Transplantation Ethics*, pp.352-362.

A cadaver is a cadaver, and nobody should be able to purchase an exemption from conscription because they managed to acquire material wealth in life. We should take care to prevent a situation similar to the historical institution of the military draft, which unjustly allowed those with means to either pay a large fee instead of going to war, or pay a surrogate to enlist in their stead. Though such inequality, appalling as it is, affected such a critical interest as national security, it is not likely to affect conscription of organs from cadavers. Monetary payment scarcely serves as a replacement for a functional vital organ. Furthermore, everyone (except those exempt for religious reasons) would be conscripted after death, and so finding a "surrogate" to donate an organ in one's place would be futile.

Current allocation criteria do not assign any kind of preference for specific races or ethnicities. Organs would not be harvested selectively with regard to race. However, were organ conscription to be established, minorities on the UNOS list would likely receive organs faster, resulting in less incidence of rejection since more organs will be procured from cadavers that shared their ethnicity. UNOS currently does not make matching up the ethnicity of recipients and donors a priority in allocation, but it is understood that a recipient's body will react more positively to, and will be less likely to reject, tissue from someone with a similar ethnicity.[32] Need, and time on the waiting list, will always overrule the ethnicity of the donor. Conscription would increase the supply of

[32] "Although organs are not matched according to race/ethnicity, and people of different races frequently match one another, all individuals waiting for an organ transplant will have a better chance of receiving one if there are large numbers of donors from their racial/ethnic background. This is because compatible blood types and tissue markers—critical qualities for donor/recipient matching—are more likely to be found among members of the same ethnicity. A greater diversity of donors may potentially increase access to transplantation for everyone." From the U.S. Department of Health and Human Services, Health Resources and Service Administration (HRSA) fact sheet: "Why Minority Donors Are Needed." Accessible online at: http://www.organdonor.gov/whydonate/minorities.html.

organs coming from different minorities, and could therefore more closely match up recipients with donors according to ethnicity.

Questions about a potential organ recipient's moral worth may be asked by those skeptical of organ donation, but they cannot form a major part of any method of allocation or procurement. Beyond restricting people who abuse drugs or alcohol from continuing to do so after receiving their first transplant (a part of existing policy), it is not clear how anyone could objectively measure another person's social worth or moral goodness. Horror stories of "selection committees" choosing whether certain people receive life-saving, critical treatment based on speculation and individual moral precepts have been publicly discussed for years. A prominent example of this was recorded in 1962 by a journalist named Shana Alexander. As a rare and novel technology at the time "artificial kidney machines," or dialysis machines, became a hot commodity and a scarce resource for sustaining life. Swedish Hospital in Seattle, Washington acquired one, and quickly assembled a selection committee to decide which patients on a waiting list would receive treatment. Transcripts of the committee's meetings and discussions show rampant biased decision-making, pure uninformed speculation about personal character, and a preference to help those who were younger, employed, educated and who happened to live in the region.[33]

What examples like the Seattle selection committee (sometimes also referred to as the "God Committee") reveal is that there is no fair way to judge the social or moral worth of anybody's life. Given this premise, and the idea that everyone deserves equal opportunity and access to health care, it follows that the most fair method of procuring

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[33] *Life* Magazine, 1962; 53 (November 9, 1962): 102-25. In defense of those who were charged with the awful duty of choosing who receives the treatment, they did try to develop a decision-making process that was as rational as possible. They seemingly freely admitted when certain decisions were arbitrary or unfair, and understood that a perfectly rational procedure was impossible. They seemed to embrace their task seriously, and did the best they could given the circumstances.

organs is conscription. Likewise, the consequences of organ conscription will obviate the need to ration certain medical treatments, resources and supplies. Allocation, as a result, can proceed according only to relevant medical criteria and will never be based on such arbitrary things as race and wealth, nor on the vague concept of moral worth.

Systemic benefits and practical considerations

Thus far, I have discussed the formal arguments for and against organ conscription, and some main reasons why many people are uncomfortable with organ donation. I have argued that a policy of organ conscription is the more ethical option in the face of growing need for organ transplants and an unfortunate lack of willing donors. However, there are further considerations and arguments that need to be made which help to establish cadaveric organ conscription as a realistic and beneficial policy governing organ procurement. Our current procurement policy purports to respect autonomy to the greatest extent possible, but does so at the expense of all other considerations, both moral and practical. In this section, I will discuss some of the practical ways in which organ conscription is a preferable alternative to a policy of consent at all costs.

A major challenge in health care is creating a system which distributes resources justly, and in some respects ensures equal care to all, but which is also as efficient is possible. A life spent hooked to a dialysis machine, having one's blood circulated out of the body, purified and detoxed, and then returned is surely quite miserable. It is also not sustainable, when every patient with chronic kidney failure who desperately needs a transplant to continue living must have dialysis performed at least once per week, and sometimes three times per week. Harvesting organs from cadavers automatically would liberate thousands of people from having to endure dialysis, sometimes for as long as

one or more years. The efficiency of health care delivery in general would be increased in at least two ways: 1) more organs would lead to better, more targeted and specific allocation (as discussed in the previous section), which would also result in decreased transplant rejection and increased retention, both extending the long-term survival rates. Physicians could afford to be more selective when deciding which organs would work best for each specific patient; 2) the amount of time a person will need to spend receiving dialysis, in the event of kidney failure, would be significantly reduced. Less resources would be expended keeping the chronically ill nominally functional.

An unfortunate and unfair side effect of the current absolute consent-based model of procurement is that families are often forced to decide on behalf of a recently deceased loved one whether organ recovery should proceed. This happens mainly when donor cards cannot be found, or a person's donation status is unknown or unknowable. In the event that a patient's consent is known, physicians tend to defer to the wishes of the family anyway.[34] Their grief may overwhelm them, or they may be insisting vehemently that doctors follow their wishes, perhaps out of misunderstanding of the donation process. Under the duress of experiencing someone close pass away, most people would have difficulty making a rational, informed or altruistic decision about organ donation. Organ conscription would keep families from having to make the sometimes divisive decision to donate a loved one's organs, sparing them the distress of thinking about ordering their bodies carved up for organs. I honestly believe this is the most humane thing to do, that families shouldn't have to make such a decision, and as a result more closure would be afforded to the family of the deceased.

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[34] Ellen Sheehy, et. al, "Estimating the Number of Potential Organ Donors in the United States," *The New England Journal of Medicine* (2003) 349: 667-674. Of the three factors affecting the conversion rate--the rate at which potential donors become actual donors--in the donation process, two related to familial consent: "the rate of requests made to families" and "the rate of consent by families," p. 672. The average consent rate was found to be only 54%, with the request rate 30% higher, at 84%.

Another problem with the radical consent-based model is the necessity of keeping people who have been declared brain dead physically functioning until consent is obtained. In fact, a similar worry identified in Newton's review was that physicians would keep people functioning who had already died in order to get their organs: "Juxtaposed with the notion that organs are removed prematurely was the belief that doctors prolong life unnecessarily to obtain organs."[35] Under conscription, brain dead individuals would no longer be sustained on life support for prolonged periods of time, kept artificially and physically alive while donation status or consent from family is sought.

Faster harvesting of viable organs helps allay concerns about the motives of doctors. It also contributes to creating a more efficient system. Less time keeping cadavers on life support means less money spent pumping dead people's hearts and ventilating air through their lungs; this, in turn, means more money and resources available to treat the living. Likewise, the more kidneys that can be transplanted into patients sustained by routine dialysis treatment yields spending a significantly less amount of money. According to the National Kidney Foundation, the federal government pays around 80 percent of dialysis costs for most patients receiving it.[36] Private insurance costs for dialysis would also decrease, resulting in lowered premiums for many others as well. The high costs associated with health care could be significantly mitigated if, even only as a first step, we initiate conscripting organs from cadavers.

I have, throughout this paper, been discussing a policy of cadaveric *organ* conscription. This moniker may be a bit misleading, though. The type of lifesaving material that can be harvested from a human body is not limited to vital organs. Also,

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[35] Newton, p. 8.

[36] National Kidney Foundation publications; NKF website: http://www.kidney.org/atoz/content/Myths.cfm.

even just *parts* of some organs suffice to help someone in need--a liver lobe and section of the cornea serving as examples. Apart from bodily organs, such things as bone marrow, skin, cartilage and even arteries and veins are possible to transplant, or graft, from one body to another.

A perfect illustration of the amount of good that conscription of organs (and other tissues) can produce is the example of bone marrow transplant. Bone marrow is a notoriously difficult tissue to transplant, due to the many specifications needed to match up between donor and recipient. The procedure to determine marrow tissue type is also extremely invasive, requiring a biopsy of tissue to be extracted directly from the bones in the hip. There are only very limited numbers of people currently on the bone marrow registry and, consequently, a small amount of diversity in tissue type exists for immediate matching. The chances of matching a donor with a recipient for a bone marrow transplant are therefore very low, with many potential recipients' best chances coming from familial donations. The upshot here is, were cadavers to have organs and other material harvested as soon as possible following death, bone marrow could be quickly typed, analyzed and extracted for transplantation as well. Thus, cadaveric organ conscription could benefit not only individuals with ESOD, but also those who have developed malignant forms of cancer, such as leukemia.

I trust that no one would raise any special objections to bone marrow extraction from cadavers in order to aid those fighting off cancer. If all efforts to move closer to a conscription model rather than a consent-based model of organ recovery fail, perhaps at least more people could embrace the somewhat modest proposal of mandatory bone marrow harvest. The scope of diseases, disorders and other medical conditions that cadaveric organ conscription would help alleviate is indeed staggering.

Conclusion

Ethical agreement is important. Although no policy or moral outlook will ever attain unanimous support in an open and diverse society, it is absolutely essential that such a policy as organ conscription be openly discussed and debated in the public sphere. In attempting to direct our policies toward social justice and fairness, we should decide which procedures are the most rational. Social justice can be maximized through instituting rational and fair procedures. I surmise that many of the worries people might have about organ conscription, along with a concern for autonomy, stem from considerations of fairness. These two values--autonomy and fairness--deserve protection in our law and our moral deliberations.

Organ conscription challenges us to consider more deeply which of our liberties can be taken away, or restricted, in order to secure other goods. It challenges us to think whether certain choices are important enough to take precedence over helping others with which we share a society. Specifically, we may be led to ask whether the current consent-based system of organ procurement is fair, and whether it really takes the consent of the donor seriously. Consider that the force of DNR (Do-Not-Resuscitate) orders, or Advanced Directives, can often (but not always) be overridden by family members with power of attorney. Similarly, the family of a deceased patient can contradict the choice of the deceased to donate organs, and can prevent physicians from harvesting viable organs. (This practice is being modified through proposed law, however.) Family members of the deceased act out of good intentions and loving motives, but they also are susceptible to overpowering emotion, and states of distress. They may not be the best-suited people to make choices about organ donation.

If we don't take consent seriously now, then the argument for organ conscription becomes much stronger, since it avoids the requirement for consent altogether. Some

think that consent is an absolute requirement when we are discussing medical interventions and the body. I tend to agree with them; consent is undoubtedly an important prerequisite for determining how our bodies are treated. Again, though, even in many medical procedures that we think should be decided by the patient, consent is often overridden. End-of-life issues speak to this tension. Only two states in the U.S. have enacted laws that empower terminally-ill people to be able to choose how and when to end their lives during times of extreme suffering. Many of the same advocates for consent in medical ethics, and organ donation in particular, believe that this option should not be available to individuals.

The arguments here are designed not only to provoke further thought and discussion, but also to point the way toward a different approach to organ donation. We should begin to think of organ donation as something required of us by our deepest moral convictions, and not simply as a supererogatory act, or a gift of sublime charity. While giving an organ is indeed a morally praiseworthy act, it should not be held up as solely the example of saints, or those possessing greater moral sensibilities. It is, in fact, a duty and we should begin to view it as such. Once we begin to understand why donation is a duty, and how we can implement a policy of conscription without committing egregious violations of freedom, we can move closer to a world where no one suffers indefinitely for lack of a simple organ transplant.

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